

Scope: The following Terms and Conditions of Sale ("Terms") shall apply to transactions between KSB Philippines, Inc. (as "Seller") with the customer (as "Buyer").

1 Scope of Supply

1.1

The Seller's quotations shall not be binding offers unless they are specifically said to be binding.

1.2

The scope of goods to be supplied or services to be rendered shall be determined exclusively on the basis of the written order confirmation of the Seller or, failing that, on the basis of the Seller's written quotation. Any additional or subsidiary agreements shall also be made in writing.

All deliveries and services shall be effected on the basis of these Terms to the exclusion of any other terms and conditions. Any references by the Buyer to its own Terms and Conditions of Purchase are herewith expressly excluded. These Terms shall also apply to all future business with the Seller, even if this is not expressly agreed upon again. Any variations to these Terms shall be subject to express written confirmation by the Seller.

1.3

Data included in product catalogues, price lists, drawings, dimension and weight tables shall not be binding on the Seller unless specific reference is made to them by the Seller. Product details of this kind shall only serve information purposes and shall not be deemed to constitute guaranteed data.

1.4

The Seller reserves all intellectual and/or industrial property rights and copyrights in respect of all technical and commercial documentation provided by the Seller, such as plans, samples, drawings, cost estimates and similar information of a tangible or intangible nature – also in electronic format. These shall not be disclosed to any third party without prior written permission of the Seller and shall be returned to the Seller immediately if requested by the Seller, which the Seller may do at any time. The Seller shall not be obliged to provide shop drawings for the goods, for the services or for spare parts.

1.5

Unless agreed otherwise, contractually agreed acceptance tests shall be performed at the place of manufacture and in accordance with the common practices of the industry concerned in the country of manufacture, with the Seller only bearing its own costs. The costs incurred by the Buyer, for example for witnessing the tests, shall be for the Buyer's account. Unless otherwise agreed, acceptance testing shall be done in accordance with the provisions laid down in DIN 1944/III or DIN ISO 9906 as applicable.

2 Delivery Time, Delay in Delivery and Force Majeure

2.1

All delivery times agreed upon shall be counted from the date of the written order confirmation from the Seller, but not until all commercial and technical issues have been settled by the contracting parties, all documents, materials, licences, permits, authorizations, approvals, releases and securities to be procured by the Buyer have been produced by the Buyer, and Seller is in receipt of the agreed down-payment from the Buyer. If this is not the case, the delivery time shall be extended by a reasonable amount of time unless the Seller is responsible for the delay.

2.2

Compliance with the agreed delivery time is subject to the proviso that the Seller itself is supplied with correct goods and on time. The Seller shall inform the Buyer as soon as possible about any anticipated delay in delivery.

2.3

Delivery times shall be deemed to have been met when the acts to be effected by the Seller in accordance with the contractually agreed trade terms have been completed. If acceptance of the goods or services by the Buyer has been agreed upon, the date of acceptance shall be decisive – justified refusal to accept the goods or services excepted – or, failing this, the notification of readiness for acceptance.

2.4

If shipping and/or acceptance of the contractual goods or services are delayed for reasons within the control of the Buyer, the Seller shall have the right to charge the costs incurred because of the delay to the Buyer within one month from the date of the notification of readiness for shipment.

2.5

Delivery times shall be reasonably extended if delivery is delayed for reasons of force majeure, labour disputes or any other events or circumstances beyond the reasonable control of the Seller. If the events delaying the delivery persist for more than three months, the Buyer and the Seller, each of them individually shall have the right to withdraw from the contract. The Seller shall not be liable to the Buyer for damages as a result of the Seller's or the Buyer's withdrawal from the contract.

2.6

If it becomes definitely impossible for the Seller to perform its obligations under the contract in full before passing of the risk or in the event that a comparable inability to perform arises, the Buyer shall have the right to withdraw from the contract without granting an additional period for performance. The same shall apply if, in the case of an order for several equally important parts, performance of part of the delivery becomes impossible and if the Buyer has a justified interest in rejecting a partial delivery. If this is not the case, the Buyer shall pay the contract price attributable to the partial delivery. In other respects, clause 7.2 of these Terms shall apply.

If the impossibility or the inability to perform arises during a delay in acceptance by the Buyer, or if the Buyer is solely or mainly responsible for these circumstances, then the Buyer shall remain under the obligation to give consideration.

2.7

If the Buyer suffers a loss due to a delay in delivery for reasons within the Seller's control, the Buyer shall have the right to claim liquidated damages in the amount of 0.5 % per full week of delay, but not exceeding 5 % of the value of that part of the total scope of supply which cannot be used on time or not in accordance with the contract as a result of the delay. Compensation for any other loss or damage caused by delay in delivery is hereby expressly excluded.

3 Passing of Risk and Acceptance

3.1

The goods or services shall be supplied in accordance with the trade terms laid down in the individual contract, whose interpretation shall be subject to the INCOTERMS edition applicable at the time the contract was concluded.

3.2

If the contract provides for the goods or services to be accepted, and if it has been agreed that such acceptance is conditional for the passing of risk, then acceptance shall be effected on the date of acceptance without delay, or, failing this, immediately following the Seller's notification of readiness for shipment. A minor defect shall not entitle the Buyer to refuse acceptance of the goods or services.

3.3

In the event that shipment and/or acceptance are delayed or are not effected at all for reasons beyond the Seller's sphere of responsibility, the risk shall be deemed to have passed to the Buyer on the date of the Seller's notification of readiness for shipment. Upon the Seller's request, the Buyer shall provide for the necessary insurance cover.

3.4

Partial deliveries shall be permitted unless they constitute an undue burden on the Buyer.

4 Prices and Payment, Collateral, Set-off and Right to Refuse Performance

4.1

Unless otherwise agreed, prices shall be understood to be EXW (Incoterms 2010), including loading, but without packaging. Prices are subject to VAT in the amount valid at the time of invoicing.

4.2

Unless otherwise agreed, payments shall be transferred to the Seller's account without deduction as follows:

Down-payment 1/3 upon receipt of order confirmation, 1/3 upon receipt of notification of readiness for shipment, and the remainder within thirty (30) days from the passing of risk.

Whatever the means of payment used, payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited.

4.3

If the Seller has well-founded doubts about the Buyer's solvency, particularly if the latter is behind with its payments, the Seller shall have the right to demand that the Buyer make advance payments or provide collateral for future deliveries, or to revoke the payment terms agreed upon earlier, without prejudice to further claims.

4.4

The practice of setting off claims or exercising the right to refuse performance by the Buyer shall only be accepted if and to the extent that undisputed or legally effective counterclaims confirmed by a final and absolute judgment exist.

5 Retention of Title

5.1

To the extent that such retention of title is valid under the applicable law the property in the goods shall not pass from the Seller until all contractual payments have been received in full. The Buyer shall at the request of the Seller assist him in taking any measures necessary to protect the Seller's title to the goods in the country concerned.

5.2

The Buyer shall not be entitled to sell, pledge or in any way charge by way of security for any indebtedness any of the goods supplied. In the event of attachment or garnishment orders, confiscation of property or other administration orders in favour of third parties, the Buyer shall notify the Seller without delay.

5.3

If the Buyer is in breach of contract, particularly in the event of default in payment, the Seller shall be entitled to repossess the goods supplied after having submitted an appropriate reminder to the Buyer, and the Buyer shall be under the obligation to return the goods to the Seller.

5.4

The Seller can only demand that the Buyer returns the goods supplied on the grounds of retention of title after having withdrawn from the contract.

5.5

The filing of a petition to open insolvency proceedings by the Buyer shall entitle the Seller to withdraw from the contract and to demand the immediate return of the goods supplied.

6 Claims in Respect of Defects

The Seller's warranty for defects in workmanship and material as well as defects in title in the goods supplied shall – to the exclusion of all further claims – cover the following, subject to the provision laid down in clause 7 of these Terms:

6.1

Defects in Workmanship and Material

6.1.1

The Seller shall repair or replace any defective goods free of charge, on the understanding that the decision whether to eliminate a defect by means of repair or replacement shall be left to the Seller's sole discretion. However, this provision shall apply only on condition that the Buyer immediately notifies the Seller in writing of any defect and shall be limited to defects due to circumstances prior to the passing of risk.

The property in goods or parts that have been replaced shall pass to the Seller, unless such goods or parts need to be disposed of separately due to, e.g., chemical, biological or nuclear contamination. In such cases, the Buyer shall be responsible for their proper disposal at its own expense.

6.1.2

The direct costs of the substitute article incurred within the scope of repair or replacements shall be for the Seller's account with the proviso that the Buyer's complaint proves to be justified. However, the Seller shall not bear any other costs, e. g. any dismantling and re-assembly costs regarding equipment other than the defective goods, costs incurred for any deployment of service personnel and assistant labour that may be required, including travel expenses. Costs incurred solely because of the fact that the place of use of the shipment is not the same as the contractually agreed destination and such deviation is not in accordance with the designated (typical) use of the goods supplied, are in each case for the Buyer's account.

6.1.3

The Seller shall not be liable under the above warranty, if the Buyer fails to grant the Seller a reasonable period of time and opportunity to carry out the necessary repair or arrange for replacement and carries these out itself or has them carried out by a third party. Only in urgent cases if the operational safety of the equipment is at risk or in order to prevent unacceptably grave damage, in which cases the Seller is to be notified immediately, or if the Seller is in default with respect to remedying a defect, shall the Buyer have the right to remedy the defect or have it remedied by a third party, and to demand reimbursement of the relevant costs incurred by him from the Seller.

6.1.4

The Seller shall not be liable for any defects caused by operating conditions other than those contractually agreed, unsuitable or improper use or storage, faulty installation or commissioning by the Buyer or any third party, fair wear and tear, improper or negligent treatment, inappropriate maintenance, unsuitable equipment, defective civil works or unsuitable construction ground, chemical, electrochemical or electrical influences, unless these can be attributed to a fault of the Seller.

6.1.5

If any repair carried out by the Buyer or by a third party is done improperly, the Seller shall not be liable for any consequences thereof. The Seller shall not be liable either for any changes to the goods supplied made without its prior consent.

6.2

Defects in Title

6.2.1

If the goods supplied cannot be put to use without infringement of a German industrial or intellectual property right or copyright, the Seller shall, at its own expense and to its sole discretion, either procure the basic right to the continued use of the goods by the Buyer or modify the goods in such manner as can reasonably be expected from him to enable the Buyer to use the goods without infringement of an industrial or intellectual property right.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the Buyer and Seller shall be equally entitled to withdraw from the contract.

The Seller shall also indemnify and hold the Buyer harmless from and against any and all undisputed or legally enforceable claims of the owner of the industrial or intellectual property right concerned.

6.2.2

The above obligations on the part of the Seller shall only exist on the proviso that the Buyer notifies the Seller immediately of any claim made on account of an alleged infringement of industrial or intellectual property rights or copyrights and if the Buyer gives the Seller all reasonable assistance in defending its case and/or enables the Seller to carry out the modification measures as per clause 6.2.1 hereunder, with the reservation that the Seller can take any protective action the Seller deems necessary, including a settlement out of court, provided the defect of title is not based on an instruction given by the Buyer, and the infringement of the said right(s) was not caused by the Buyer having made unauthorized changes to the goods supplied or having used the goods in a manner not compliant with the contract.

6.2.3

The Buyer shall assume sole responsibility for all materials it shall provide, such as drawings, calibres, samples or the like. The Buyer shall be responsible for ensuring that the design drawings it provides do not infringe any third-party intellectual property rights. The Seller shall not be liable towards the Buyer for checking whether the submission of offers pursuant to a design provided to the Seller will infringe any third-party intellectual property rights. Should the Seller, nonetheless, be held liable owing to facts substantiating the

claim, the Buyer shall hold harmless the Seller from any such liability.

7 Liability

7.1

If the goods supplied cannot be put to the contractual use by the Buyer due to a fault of the Seller and if this is caused by the failure to perform or the improper performance of any recommendations or advice given before or after conclusion of the contract or by the violation of any other collateral obligation under the contract – in particular instructions on the proper operation and maintenance of the goods supplied –, then the provisions of clauses 6 and 7.2 shall apply accordingly, to the exclusion of all further claims.

7.2

Notwithstanding anything contained in these Terms to the contrary, the maximum liability of the Seller hereunder, irrespective of legal grounds (e.g. delay, warranty, tort) and including its agents, servants, subcontractors and suppliers in respect to any and all claims for damages or losses which may arise in connection herewith shall not exceed the contract price or EUR200,000.00, whichever is lower.

Any further liability shall be excluded. Particularly the Seller shall in no event be liable, whether by way of indemnity or otherwise for any loss of profit, loss of use, costs of capital, costs connected with the interruption of operation or any further special, indirect or consequential damages.

8 Warranty Term and Limitation

The warranty term for the goods supplied shall be 12 months from the delivery. All claims of the Buyer on whatever legal grounds shall be barred after the warranty term and to the extent, the applicable law allows.

9 Suspension by Buyer

In case of suspension by Buyer of a confirmed order, the reason for which is not attributable to the Seller, the Seller shall be entitled to reimbursement of any and all additional cost and expenses as a result of such suspension. In case of such suspension continuing for a period of more than six (6) months, the Seller shall be entitled to terminate the contract. In this case, the Seller shall be paid the value of all equipment and services wholly or partly executed, of all material ordered and the expenditures reasonably incurred in the expectation of completing the works, as well as the cost of demobilisation, if any.

10 Termination or Cancellation for convenience by Buyer

In case of termination or cancellation (as the case may be) of an order for convenience by the Buyer, the Seller shall be entitled to payment of the contract price for all works performed or partly performed up to the date of such termination or cancellation (as the case may be) as well as of all reasonable costs incurred in connection with the termination or cancellation (as the case may be), including any and all cost of the Seller reasonably incurred in the expectation of completing the whole works and the cost of demobilisation, if any.

11 Compliance and Export Controls

11.1

As laid down in its Code of Conduct, the Seller and its employees are committed to professional and honest behaviour, which includes compliance with legal requirements and ethical standards, the Seller expects similar behaviour from the Buyer and other business partners. In the event of violations of statutory provisions by the Buyer, especially those involving corrupt or fraudulent acts, the Seller shall be entitled to terminate the contract immediately and without notice. The right to claim damages is reserved by the Seller.

11.2

The Buyer agrees to comply with the relevant statutory regulations for dealing with employees, environmental protection and occupational health and safety, and when carrying out its activities to continuously reduce the adverse effects on human health and the environment.

11.3

The Buyer agrees to comply with all applicable export control regulations and embargoes. The Buyer shall immediately inform the Seller if the goods supplied are to be delivered for end use to a country or a natural person subject to export restrictions or embargoes. The same shall apply when such fact becomes known to the Buyer at a later date. The Buyer shall be responsible for obtaining any required export licence unless the Seller has expressly agreed to do so. All deliveries shall, in any case, be made only after the required licence has been issued; all delivery dates will be adjusted accordingly. If any required licence is not issued within a suitable period of time, both Parties shall be entitled to terminate the contract.

12 Use of Software

12.1

The Seller shall grant to the Buyer a non-exclusive right to use any software as well as any associated documentation as may be included in the scope of supply. The software shall only be used in or with the goods supplied for which it is intended according to the Seller's specification. Any other uses shall not be permitted.

12.2

The Buyer shall only be entitled to copy, revise, translate or convert the software to the source code to the extent authorized by law. The Buyer shall neither remove nor change any supplier data, in particular copyright notices, without the express prior consent of the Seller.

12.3

The Seller reserves all other rights to the software and associated documentation, including any copies. The Buyer shall not be entitled to grant sub-licences.

13 Applicable Law and Place of Jurisdiction

13.1

All legal relations between the Seller and a Buyer shall be subject to the substantive laws of Republic of the Philippines upon exclusion of conflict of law principles and upon exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.

13.2

The place of jurisdiction shall be the court having jurisdiction at the seat of the Seller's corporation, or – at the Seller's option – the Buyer's place of jurisdiction.